

Senate File 359

H-8313

1 Amend Senate File 359, as passed by the Senate, as follows:

2 1. By striking everything after the enacting clause and
3 inserting:

4 <Section 1. NEW SECTION. **146C.1 Legislative findings and**
5 **intent.**

6 1. The general assembly finds all of the following:

7 a. Abortion carries significant physical and psychological
8 risks to the pregnant woman, and these physical and
9 psychological risks increase exponentially with the
10 postfertilization age of the unborn child.

11 b. As the second trimester of a pregnancy progresses, in the
12 vast majority of uncomplicated pregnancies, the health risks to
13 the pregnant woman of undergoing an abortion are greater than
14 the risks of carrying a pregnancy to term.

15 c. Medical complications from dilation and evacuation
16 abortions include but are not limited to pelvic infection;
17 incomplete abortions and retained tissue; blood clots; heavy
18 bleeding or hemorrhage; laceration, tear, or other injury to
19 the cervix; puncture, laceration, tear, or other injury to the
20 uterus; injury to the bowel or bladder; depression; anxiety;
21 substance abuse; and other emotional or psychological problems.
22 Further, in abortions performed in the second trimester, there
23 is a higher risk of requiring a hysterectomy, other reparative
24 surgery, or blood transfusion.

25 d. The state of Iowa has legitimate interests from the
26 outset of pregnancy in protecting the health of women, as the
27 medical, emotional, and psychological consequences of abortion
28 are serious and can be lasting.

29 2. Based upon the findings specified in subsection 1, it is
30 the intent of the general assembly through application of this
31 chapter to restrict the practice of nontherapeutic or elective
32 abortion to the period prior to the unborn child achieving the
33 postfertilization age of fifteen weeks.

34 Sec. 2. NEW SECTION. **146C.2 Definitions.**

35 As used in this chapter, unless the context otherwise

1 requires:

2 1. "*Abortion*" means the termination of a human pregnancy
3 with the intent other than to produce a live birth or to remove
4 a dead fetus.

5 2. "*Attempt to perform an abortion*" means an act, or
6 an omission of a statutorily required act, that, under the
7 circumstances as the actor believes them to be, constitutes a
8 substantial step in a course of conduct planned to culminate in
9 the performing of an abortion.

10 3. "*Department*" means the department of public health.

11 4. "*Fertilization*" means the fusion of a human spermatozoon
12 with a human ovum.

13 5. "*Major bodily function*" includes but is not limited
14 to functions of the immune system, normal cell growth, and
15 digestive, bowel, bladder, neurological, brain, respiratory,
16 circulatory, endocrine, and reproductive functions.

17 6. "*Medical emergency*" means a situation in which an
18 abortion is performed to preserve the life of the pregnant
19 woman whose life is endangered by a physical disorder, physical
20 illness, or physical injury, including a life-endangering
21 physical condition caused by or arising from the pregnancy, or
22 when continuation of the pregnancy will create a serious risk
23 of substantial and irreversible impairment of a major bodily
24 function of the pregnant woman.

25 7. "*Medical facility*" means any public or private hospital,
26 clinic, center, medical school, medical training institution,
27 health care facility, physician's office, infirmary,
28 dispensary, ambulatory surgical center, or other institution or
29 location where medical care is provided to any person.

30 8. "*Perform*", "*performed*", or "*performing*", relative to an
31 abortion, means the use of any means, including medical or
32 surgical, to terminate the pregnancy of a woman known to be
33 pregnant with the intent other than to produce a live birth or
34 to remove a dead fetus.

35 9. "*Physician*" means a person licensed under chapter 148.

1 10. "*Postfertilization age*" means the age of the unborn
2 child as calculated from fertilization.

3 11. "*Probable postfertilization age*" means what, in
4 reasonable medical judgment, will with reasonable probability
5 be the postfertilization age of the unborn child at the time
6 the abortion is to be performed.

7 12. "*Reasonable medical judgment*" means a medical judgment
8 made by a reasonably prudent physician who is knowledgeable
9 about the case and the treatment possibilities with respect to
10 the medical conditions involved.

11 13. "*Severe fetal abnormality*" means a life-threatening
12 physical condition that, in the physician's reasonable medical
13 judgment, regardless of the provision of life-saving medical
14 treatment, is incompatible with life outside the womb.

15 14. "*Unborn child*" means an individual organism of the
16 species homo sapiens from fertilization to live birth.

17 Sec. 3. NEW SECTION. 146C.3 **Determination of**
18 **postfertilization age — certain abortions prohibited —**
19 **exceptions — reporting requirements — penalties.**

20 1. Except in the case of a medical emergency or a
21 severe fetal abnormality, in addition to compliance with
22 the prerequisites of chapter 146A, an abortion shall not be
23 performed or be attempted to be performed unless the physician
24 performing the abortion has first made a determination of the
25 probable postfertilization age of the unborn child or relied
26 upon such a determination made by another physician. In making
27 such a determination, a physician shall make such inquiries
28 of the pregnant woman and perform or cause to be performed
29 such medical examinations and tests the physician considers
30 necessary in making a reasonable medical judgment to accurately
31 determine the postfertilization age of the unborn child.

32 2. a. A physician shall not perform or attempt to perform
33 an abortion upon a pregnant woman when it has been determined,
34 by the physician performing the abortion or by another
35 physician upon whose determination that physician relies, that

1 the probable postfertilization age of the unborn child is
2 fifteen or more weeks unless, in the physician's reasonable
3 medical judgment, any of the following applies:

4 (1) The pregnant woman has a condition which the physician
5 deems a medical emergency.

6 (2) The abortion is necessary to preserve the life of an
7 unborn child.

8 (3) The unborn child is afflicted with a severe fetal
9 abnormality.

10 *b.* If an abortion is performed under this subsection, the
11 physician shall terminate the pregnancy in the manner which,
12 in the physician's reasonable medical judgment, provides the
13 best opportunity for an unborn child to survive, unless, in the
14 physician's reasonable medical judgment, termination of the
15 pregnancy in that manner would pose a greater risk than any
16 other available method of the death of the pregnant woman or
17 of the substantial and irreversible physical impairment of a
18 major bodily function. A greater risk shall not be deemed to
19 exist if it is based on a claim or diagnosis that the pregnant
20 woman will engage in conduct which would result in the pregnant
21 woman's death or in substantial and irreversible physical
22 impairment of a major bodily function.

23 3. A physician who performs or attempts to perform an
24 abortion shall report to the department, on a schedule and in
25 accordance with forms and rules adopted by the department, all
26 of the following:

27 *a.* If a determination of probable postfertilization age of
28 the unborn child was made, the probable postfertilization age
29 determined and the method and basis of the determination.

30 *b.* If a determination of probable postfertilization age of
31 the unborn child was not made, the basis of the determination
32 that a medical emergency existed or that the unborn child was
33 afflicted with a severe fetal abnormality.

34 *c.* If the probable postfertilization age of the unborn
35 child was determined to be fifteen or more weeks, the basis

1 of the determination of a medical emergency, the basis of the
2 determination that the unborn child was afflicted with a severe
3 fetal abnormality, or the basis of the determination that the
4 abortion was necessary to preserve the life of an unborn child.

5 *d.* The method used for the abortion and, in the case of
6 an abortion performed when the probable postfertilization age
7 was determined to be fifteen or more weeks, whether the method
8 of abortion used was one that, in the physician's reasonable
9 medical judgment, provided the best opportunity for an unborn
10 child to survive or, if such a method was not used, the basis
11 of the determination that termination of the pregnancy in
12 that manner would pose a greater risk than would any other
13 available method of the death of the pregnant woman or of the
14 substantial and irreversible physical impairment of a major
15 bodily function.

16 4. *a.* By June 30, annually, the department shall issue a
17 public report providing statistics for the previous calendar
18 year, compiled from the reports for that year submitted in
19 accordance with subsection 3. The department shall ensure that
20 none of the information included in the public reports could
21 reasonably lead to the identification of any woman upon whom an
22 abortion was performed.

23 *b.* (1) A physician who fails to submit a report by the end
24 of thirty days following the due date shall be subject to a
25 late fee of one hundred dollars for each additional thirty-day
26 period or portion of a thirty-day period the report is overdue.

27 (2) A physician required to report in accordance with
28 subsection 3 who has not submitted a report or who has
29 submitted only an incomplete report more than one year
30 following the due date, may, in an action brought in the
31 manner in which actions are brought to enforce chapter 148,
32 be directed by a court of competent jurisdiction to submit a
33 complete report within a time period stated by court order or
34 be subject to contempt of court.

35 (3) A physician who intentionally or recklessly falsifies

1 a report required under this section is subject to a civil
2 penalty of five hundred dollars.

3 5. Any medical facility in which a physician is authorized
4 to perform an abortion shall implement written medical
5 policies and procedures consistent with the requirements and
6 prohibitions of this chapter.

7 6. The department shall adopt rules to implement this
8 section.

9 Sec. 4. NEW SECTION. **146C.4 Civil actions and penalties.**

10 1. Failure of a physician to comply with any provision of
11 section 146C.3, with the exception of the late filing of a
12 report or failure to submit a complete report in compliance
13 with a court order, is grounds for licensee discipline under
14 chapter 148.

15 2. A woman upon whom an abortion has been performed in
16 violation of this chapter may maintain an action against the
17 physician who performed the abortion in intentional or reckless
18 violation of this chapter for actual damages.

19 3. A woman upon whom an abortion has been attempted in
20 violation of this chapter may maintain an action against the
21 physician who attempted the abortion in intentional or reckless
22 violation of this chapter for actual damages.

23 4. A cause of action for injunctive relief to prevent a
24 physician from performing abortions may be maintained against a
25 physician who has intentionally violated this chapter by the
26 woman upon whom the abortion was performed or attempted, by
27 a parent or guardian of the woman if the woman is less than
28 eighteen years of age at the time the abortion was performed
29 or attempted, by a current or former licensed health care
30 provider of the woman, by a county attorney with appropriate
31 jurisdiction, or by the attorney general.

32 5. If the plaintiff prevails in an action brought under
33 this section, the plaintiff shall be entitled to an award for
34 reasonable attorney fees.

35 6. If the defendant prevails in an action brought under

1 this section and the court finds that the plaintiff's suit was
2 frivolous and brought in bad faith, the defendant shall be
3 entitled to an award for reasonable attorney fees.

4 7. Damages and attorney fees shall not be assessed against
5 the woman upon whom an abortion was performed or attempted
6 except as provided in subsection 6.

7 8. In a civil proceeding or action brought under this
8 chapter, the court shall rule whether the anonymity of any
9 woman upon whom an abortion has been performed or attempted
10 shall be preserved from public disclosure if the woman does not
11 provide consent to such disclosure. The court, upon motion
12 or on its own motion, shall make such a ruling and, upon
13 determining that the woman's anonymity should be preserved,
14 shall issue orders to the parties, witnesses, and counsel
15 and shall direct the sealing of the record and exclusion of
16 individuals from courtrooms or hearing rooms to the extent
17 necessary to safeguard the woman's identity from public
18 disclosure. Each such order shall be accompanied by specific
19 written findings explaining why the anonymity of the woman
20 should be preserved from public disclosure, why the order is
21 essential to that end, how the order is narrowly tailored to
22 serve that interest, and why no reasonable less restrictive
23 alternative exists. In the absence of written consent of the
24 woman upon whom an abortion has been performed or attempted,
25 anyone, other than a public official, who brings an action
26 under this section shall do so under a pseudonym. This
27 subsection shall not be construed to conceal the identity
28 of the plaintiff or of witnesses from the defendant or from
29 attorneys for the defendant.

30 9. This chapter shall not be construed to impose civil
31 or criminal liability on a woman upon whom an abortion is
32 performed or attempted.

33 Sec. 5. EFFECTIVE DATE. This Act, being deemed of immediate
34 importance, takes effect upon enactment.>

35 2. Title page, lines 1 and 2, by striking <fetal body parts

1 and providing penalties.> and inserting <an unborn child,
2 providing penalties, and including effective date provisions.>
3 3. By renumbering as necessary.

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